HIGH COURT OF CHHATTISGARH AT BILASPUR
WRIT PETITION (C) NO. 2530 of 2007

Petitioner (Defendant)	Sanjay Jadhwani, son of Late Shri Manohar Lal Jadhwani, aged about 38 years, Proprietor M/s Sanjay Automobiles, M.G. Road, Raipur and resident of LIG-8, Indravati Colony, Raipur (C.G.)

Versus

Respondents (Plaintiffs)	1. Smt. Geeta Bai, wife of Shri Bal Bahadur Namdeo, aged about 65 years, resident of Jawahar Nagar, Raipur.
	2. Rajesh Kumar Namdeo, son of Late Shri Kallu Prasad Namdeo, resident of Jawahar Nagar, Raipur

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

Single Bench :- Hon'ble Shri Justice Satish K. Agnihotri

Present :- Mr. B.P. Sharma, Advocate for the Petitioner.
Mr. N.K. Vyas, Advocate for the Caveator.

O R D E R
(Passed on this 30th day of April, 2007)

1. By this petition, the petitioner seeks a direction for setting aside the order dated 26.2.2007 (Annexure P/7) passed by the VIIth Civil Judge, Class-II, Raipur in Civil Suit No. 36 A/07 and quashing of the order dated 9.4.2007 (Annexure P/8) passed by the XIth Additional District Judge (F.T.C.), Raipur in Miscellaneous Civil Appeal No. 4/2007.

2. The indisputable facts in nutshell, are that the respondents/plaintiffs filed a suit for permanent injunction before the VIIth Civil Judge, Class-II, Raipur along with an application for interim injunction under Order 39, Rules 1 and 2 of the Code of Civil Procedure, 1908

(for short "the CPC"), restraining the petitioner from interfering with the construction of the disputed building. The VII[th] Civil Judge, Class-II, Raipur after hearing the parties, by the order dated 26.2.2007 (Annexure P/7), declined to grant interim injunction on the ground that the respondents/plaintiffs have failed to prove that their easementary rights would be affected by the construction of the disputed building.

3. Being aggrieved, the respondents/plaintiffs preferred an appeal, being Miscellaneous Civil Appeal No. 4/2007, before the XI[th] Additional District Judge (F.T.C.), Raipur, wherein the XI[th] Additional District Judge, after considering the facts and circumstances, by the order dated 9.4.2007 (Annexure P/8) held that, if the construction is not stayed, the suit itself would become infructuous, as the suit is for permanent injunction against the construction of the said building, which affects the easementary rights of the plaintiffs. The XI[th] Additional District Judge further held that the balance of convenience is in favour of the plaintiffs and they would suffer irreparable loss, if during pendency of the suit, interim injunction is not granted.

4. I have heard learned counsel appearing for the petitioner and perused the records and documents appended thereto. Admittedly, the suit for permanent injunction, restraining the respondent (petitioner herein) not to block the easementary rights of the plaintiffs by erecting the disputed permanent construction was filed. The interim application for staying the construction of the disputed building during pendency of the suit, if not granted, the very purpose of filing of the suit seeking relief for permanent injunction would be frustrated. The impugned order passed by the XI[th]

(95) (75)

Additional District Judge is just, legal and proper and it needs no interference.

5. It is well settled principle of law that under Article 227 of the Constitution of India, this Court has jurisdiction of judicial review of the order passed by the Court below, in the event, there is manifest and apparent error on the face of the proceedings based on the clear ignorance or utter disregard to the provisions of law or there is grave failure of justice or grave injustice has occasioned thereby. Further, this Court can also entertain the petition in its supervisory jurisdiction if there is perversity, irregularity or illegality in the process of decision, not in the decision itself.

6. As a result and for the reasons aforestated, this petition is dismissed.

Sd/-
Satish K. Agnihotri
Judge

B/-